State Board of Equalization

OPERATIONS MEMO

Confidential

No: 1182
Date: August 18, 2011

SUBJECT: COLLECTION COST RECOVERY FEE

I. PURPOSE

This operations memorandum contains policies and procedures related to the collection cost recovery fee (CRF).

II. BACKGROUND

As part of budget trailer bill Senate Bill (SB) 858 (Chapter 721, Statutes 2010), laws were enacted which required the Board of Equalization (BOE) to begin imposing a CRF on past due liabilities effective January 1, 2011. The CRF statutes enacted under SB 858 are identified in Table 1. These statutes require that CRFs assessed be equal to the actual collection costs incurred by BOE. The statutes also required that demand notices issued on or after January 1, 2011, inform tax and feepayers ("taxpayers") that continued failure to pay a past due liability may result in collection action being taken, including the assessment of a CRF.

Other important provisions of the enacted statutes include authorization for BOE to collect the CRF in the same manner as it collects a tax or fee liability and authorization to waive the CRF upon a taxpayer's written request. However, waiver of the CRF is limited to instances where a taxpayer fails to pay a liability due to reasonable cause and circumstances beyond their control.

Table 1 - CRF Statutes Resulting from SB 858

Sales and Use Tax Law (6833)	Hazardous Substances Tax Law (43449)
Use Fuel Tax Law (9035)	Integrated Waste Management Fee Law (45610)
Private Railroad Car Tax Law (11534)	Oil Spill Response, Prevention, and Administration Fees Law (46466)
Cigarette and Tobacco Products Tax Law (30354.7)	Underground Storage Tank Maintenance Fee Law (50138.8)
Alcohol Beverage Tax Law (32390)	Fee Collections Procedures Law (55211)
Timber Yield Tax Law (38577)	Diesel Fuel Tax Law (60495)
Emergency Telephone Users Surcharge Law (41127.8)	Energy Resources Surcharge Law (40168)

III. CRF DETAILS

A. Notification

The CRF statutes require BOE to inform taxpayers by demand notice that failure to pay a liability may result in collection action, including the assessment of a CRF. To meet this requirement, BOE's demand notices were modified to provide this notification via a bill note. This bill note (#958) is printed on all demand notices issued on or after January 1, 2011.

Demand notices issued prior to January 1, 2011, did not include the new bill note. Therefore, in January 2011 new demand notices were issued to taxpayers with existing liabilities for which either a demand notice was not sent or was sent prior to January 1, 2011. Demand notices were not sent to taxpayers with installment payment agreements (IPAs), active bankruptcies, liabilities in sundry withhold or stop demand status, or liabilities previously written-off or in pending write-off status. However, demand notices will be sent automatically if an IPA is later terminated or cancelled (PRM Difference Status removed in IRIS), an active legal bankruptcy case is closed, a sundry withhold or stop demand status removed, or if an account is removed from write-off status.

Although Timber Tax accounts are not maintained in the BOE's Integrated Revenue Information System (IRIS), demand notices were issued for these accounts using a stand-alone desktop application.

B. Assessment

The CRF applies to each final liability greater than $250 that remains unpaid 91 days following the issuance of a demand notice. Only one CRF is assessed per liability. The liability does not need to include tax for the CRF to be assessed; the CRF will apply even if only interest and/or penalty amounts remain due. The CRF does not accrue interest or incur penalties. Further, a CRF is not a deficiency determination and cannot be petitioned.

When a CRF is assessed, a separate liability (difference) is created in IRIS and a Notice of Collection Fee (CRF Notice) is automatically produced and mailed to the taxpayer. Liabilities encompassing multiple reporting periods (e.g., audits, multiple period compliance assessments) will only be subject to one CRF. Conversely, if multiple liabilities exist for a specific reporting period, a separate CRF will be assessed for each. It is important to remember that when clearing more than one delinquent tax return on an account using a compliance assessment (CAS), all periods must be included in a single CAS.

CRF differences are identified in IRIS with Difference Type "COC" and Difference Reason "CRF." A CRF difference has the same period dates as the associated, fee-originating difference and will generally appear below the fee-originating liability on the DIF DA screen in IRIS.

Once a CRF is assessed, IRIS will automatically keep the CRF difference in sync with the fee-originating difference. Transactions impacting a fee-originating difference (e.g., payments, revenue adjustments) may result in the amount of a CRF difference increasing or decreasing. For example, after a CRF is assessed, a payment is moved to the fee-originating liability. If the payment has an effective date prior to the CRF assessment date and results in the fee-originating liability being paid in full, the CRF difference will automatically adjust to zero.

There will be a slight delay from the time a transaction occurs on a fee-originating difference until the CRF is adjusted. This delay occurs because the syncing process only occurs when specific "jobs" are run in IRIS. These jobs run frequently throughout the day.

A new IRIS screen, DIF CF, was created and can be viewed by typing a "c" on the Action line of either the fee-originating or the CRF difference from the DIF DA screen and pressing Enter. The new screen provides basic information regarding both the fee-originating and CRF differences, including the current balance of each difference. Additionally, DIF CF contains the following three fields:

- *Expected Qualifying Demand Date or Qualifying Demand Date*– The date on which a demand notice was issued and contained the fee-originating liability. In certain circumstances a fee-originating difference may have more than one qualifying demand date. For example, when a bankruptcy case is closed, a new demand notice will automatically be generated. The date of the post bankruptcy demand notice will become the qualifying demand date for those differences not assessed the CRF prior to the taxpayer entering bankruptcy. Once the CRF has been assessed, the field label will change to "Qualifying Demand Date."
- *Expected Assessment Date or Assessment Date* – The date on which the CRF is expected to be assessed. The expected date may not be the actual assessment date since assessment of a CRF can be delayed for various reasons such as, the existence of an installment payment agreement or an active bankruptcy case. Once the CRF has been assessed, the field label will change to "Assessment Date" and the date displayed in this field will not change.
- *First Billed Date* – The date on which the CRF was first billed.

C. <u>Assessment Exclusions</u>

Cost of collection amounts (e.g., warrant costs, liquor license renewal fees paid by BOE), reinstatement fees, and liabilities on federal government accounts (Ownership Type Code "F") are not subject to the CRF.

Taxpayers may avoid the CRF by either paying their liability in full or by entering into an IPA prior to the CRF being assessed. To ensure CRFs are not assessed on liabilities included in an IPA, collection staff must ensure a promise is input and approved (if required) in ACMS prior to the CRF being assessed. IPAs entered into or approved **after** the CRF has been assessed will not result in cancellation of the CRF in IRIS. In instances where an IPA is terminated or cancelled, the CRF will automatically be applied in IRIS to each liability for which more than $250 remains due and which is more than 90 days past due.

Staff should be mindful of pending CRF assessments in instances where a taxpayer does not enter into an IPA but, instead, proposes to pay their liability in full by a certain date. Staff should review the DIF CF screen for each unpaid, fee-originating difference to identify the date(s) on which CRF(s) are expected to be assessed. In instances where the taxpayer's proposal will result in the CRF being assessed prior to payment in full being received, staff should inform the taxpayer of the pending CRF information. This information may encourage taxpayers to remit payment in full sooner to avoid the CRF. In instances where this is not possible, the taxpayer may request to enter into an IPA to avoid the CRF.

A CRF will not be assessed on liabilities where a sundry withhold, stop demand, or active legal bankruptcy status exists in IRIS. The sundry withhold and stop demand statuses will only prevent a CRF from being assessed but will not result in cancellation of a CRF previously assessed. With regard to accounts with active legal bankruptcy status, CRFs assessed on or after the bankruptcy effective date (petition date) will automatically be adjusted to zero. IRIS will automatically generate a new demand notice when a sundry withhold or stop demand status is removed or when a legal bankruptcy case is closed. A CRF will only be assessed if, 91 days following the "new" demand notice date, the unpaid liability is greater than $250 and is not included in an IPA.

Lastly, the CRF will not be assessed on liabilities that were discharged from bankruptcy, in pending write-off status, or written-off prior to CRF being assessed. A written-off liability will only be subject to the CRF if it is removed from write-off status, a demand notice was issued on or after January 1, 2011, and the liability meets all CRF assessment criteria (e.g., greater than $250, more than 90 days past due, not in an IPA).

D. Installment Payment Agreements

IRIS is only aware that a difference is included in an IPA if the "PRM" (promise) difference status exists. The PRM status is **only** applied to differences included in a promise and will **only** appear when a promise has been input in ACMS and is in "active" status. Staff should be aware of instances where the CRF assessment date is nearing and ensure the promise is input and approved (if necessary) timely. Failing to do so will result in the CRF being assessed when it is not appropriate.

Future system enhancements will allow staff to identify the effective date of an IPA (i.e., approved BOE-407 or 407-S signed and returned to BOE) when inputting a promise in ACMS. Any CRF liabilities assessed on or after the effective date of the promise will automatically be backed-out in IRIS. This enhancement should reduce the need for manual CRF adjustments.

The automatic assessment of the CRF triggered by the removal of the PRM difference status in IRIS may require specific actions to be taken when assessment of the CRF is not appropriate. For example, when a taxpayer enters into an IPA which includes both billed and unbilled (e.g., returns filed but not yet billed) differences, staff will often input a promise in ACMS prior to all liabilities being billed. Once all liabilities have been billed, staff will cancel and re-input the promise in ACMS so that all liabilities are included in the promise. **When this situation occurs, the "new" promise must be input and approved (if necessary) on the same date the prior promise is cancelled to prevent the PRM difference status from being removed in IRIS and the CRF from being assessed inappropriately.**

In some instances, penalty amounts are excluded from an IPA when the promise is input in ACMS. This is done when the taxpayer has (or will) requested relief of the penalty. When payment for all amounts included in the IPA has been received, the promise will automatically "complete" in ACMS, resulting in the PRM difference status being removed in IRIS. Staff should be aware that this may result in the CRF being assessed on the outstanding penalty amount for which the taxpayer has requested relief. Staff should inform taxpayers that this may occur when the IPA is initially established. Assuming relief of the penalty is granted, the CRF amount will be automatically adjusted to zero. In instances where relief of penalty is denied, relief of the CRF may be granted assuming the taxpayer pays the penalty amount in full (see section VI.B. for additional information).

Court ordered restitution (COR) can only be considered an IPA with respect to the CRF exclusion if the COR expressly established a defined payment plan **and** the COR was issued prior to the CRF being assessed. When this occurs, staff must follow procedures contained in section IV. to initiate adjustment the CRF amounts.

E. CRF Rates

Statutes require the amount of the CRFs imposed be equal to the collection costs incurred by BOE. Using direct personnel costs incurred by the BOE in FY 2009-10, the CRF amounts for calendar year 2011 range from $185 to $925. The CRF amount varies based on the amount of the unpaid liability on the date the CRF is assessed. Additionally, a CRF will be assessed on each unpaid liability that exists on an account. Table 2 contains the CRF rates for calendar year 2011.

Table 2 - CRF Rates, Calendar Year 2011

Liability Amount	Fee Amount
$250.01 - $2,000.00	$185
$2,000.01 - $50,000.00	$550
$50,000.01 and greater	$925

The CRF rates will be recalculated and adjusted annually to ensure the total CRFs assessed are equal to the total collection costs incurred by BOE. Revised CRF rates will only apply to liabilities not previously assessed a CRF. Staff in the Sales and Use Tax Department's (SUTD's) Tax Policy Division (TPD) is responsible for calculating the CRF rates. The proposed CRF rates will be submitted to the Board Members for approval. TPD staff is responsible for ensuring approved CRF rates are updated in IRIS. CRF rates will become effective on January 1st of each year.

F. Collection

The CRF is subject to all remedies available for collecting other unpaid, final liabilities, such as levies, notices to withhold, wage garnishments, and liens. Compliance Policy and Procedures Manual (CPPM) section 757.000 contains information regarding liens, including the BOE's lien filing requirements. In addition to tax, penalty, interest and reinstatement fees, CRF amounts must also be paid prior to a seller's permit or special taxes account being reinstated.

A taxpayer, or their agent, may request a past due liability be paid from escrow on the sale of a liquor license, business, or real property. Similarly, a purchaser of a business may request a sales tax clearance from the BOE prior to purchasing a business. When escrow or tax clearance requests are received, staff should review the DIF CF screen to identify pending CRFs that may be assessed prior to payment being received. Pending CRF assessments should be disclosed using the appropriate form (BOE-872-A, 874, 874-B, 874-C, or 1274). These forms will be revised to accommodate pending CRF amounts and assessment dates.

Unpaid CRF amounts that exist on a primary account cannot be included in a dual determination or predecessor billing. With regard to successor billings, only CRF amounts assessed on or before the date the business was purchased can be included in a successor billing. As with other unpaid liabilities, dual determinations, predecessor billings, and successor billings that remain unpaid for more than 90 days are subject to the CRF as identified in section III.

IV. CRF ADJUSTMENTS - MANUAL

The CRF is automatically assessed in IRIS when a fee-originating difference has met all CRF assessment criteria. As a result, instances may arise where the CRF is assessed inappropriately. For example, a taxpayer entered into an IPA prior to the CRF being assessed, but a promise was not input in ACMS timely. As mentioned in III. D., future system enhancements will allow staff to identify the effective date of an IPA when inputting a promise in ACMS which should reduce the need to manually adjust inappropriate CRF assessments. The following procedures should be followed when manual adjustment of a CRF is required.

A. The responsible collector must review the account and confirm the CRF was assessed in error. With regard to the IPA situation, the taxpayer must actually have been in an IPA prior to the date the CRF was assessed. Generally, this means the taxpayer must have signed an IPA agreement (BOE-407 or 407-S) prior to the CRF assessment date.

B. If the CRF was assessed inappropriately, the responsible collector will create an email with the subject line containing "CRF" and the taxpayer's account number. In the email, identify the Difference ID and Period Dates for each CRF difference that requires adjustment. The email should explain the reason(s) why adjustment of the CRF is needed. This same information (Difference ID, Period Dates, and explanation) must also be input as a comment on the account in IRIS and ACMS.

C. The responsible collector will send the email to a supervisor for approval. If approved, the supervisor must add comments in IRIS and ACMS stating the CRF adjustment request is approved. For SUTD, the supervisor must then forward the email to the Return Analysis Unit (RAU) email group, "SUTD-RAU Electronic Maintenance Requests." For the Property and Special Taxes Department (PSTD), the Special Taxes and Fees Division (STFD)-Collections supervisor will email the appropriate STFD-Return Processing and Support Section (RPSS) supervisor; the Motor Carrier Office (MCO) collections supervisor will email the appropriate staff.

D. Staff receiving the approved request will process it by performing a legal adjustment (LAJ) in IRIS on the identified CRF differences. Incomplete requests will not be processed and will be returned to the requester for completion.

When the taxpayer completes an IPA by paying their liability in full, no further action will be required with regard to the adjusted CRFs. However, in instances where an IPA is terminated or cancelled (PRM difference status removed in IRIS), reversal of the CRF adjustment will be necessary if the fee-originating liability still meets all CRF assessment criteria (e.g., greater than $250 due). Additionally, staff must identify the dollar amount of each CRF that must be reestablished based on the dollar amount remaining due of the fee-originating liability **as of the date the IPA was terminated or cancelled.** The CRF rates in effect on the date the IPA is terminated or cancelled must be used when determining the amount of the CRF to be reestablished. For example, if an IPA is terminated or cancelled in 2012, the 2012 CRF rates should be used.

The collector emails the supervisor all details (DIF IDs and period dates of CRF differences) regarding the request, including a description of why the CRFs need to be reestablished. The collector must also input the same information as a comment on the account in IRIS and ACMS. If approved, the supervisor must add comments in IRIS and ACMS stating the CRF adjustment request is approved. The supervisor must then forward the email to the appropriate person or email group as identified in C.

V. PROCESSING RELIEF REQUESTS

The same sections/units responsible for processing requests for relief of penalty will process requests for relief of the CRF. Approval levels and requirements currently utilized by SUTD, STFD, MCO, and the County Assessed Properties Division (CAPD) in processing relief of penalty requests will be adhered to in processing CRF relief requests.

A. Processing Responsibility

1. Sales and Use Tax Department (SUTD)

   Requests for relief of the CRF will be processed by the RAU, the Petitions Section, or the Consumer Use Tax Section (CUTS) based upon the fee-originating liability on which the CRF was assessed, as identified in Table 3. When a request involves CRFs assessed on multiple liability types, both self-assessed and BOE-assessed, processing of the request will be handled by both RAU and the Petitions Section.

Table 3 - CRF Relief Request Processing Responsibility

Fee-Originating Liability Type	Section/Unit
Self-Assessed	Return Analysis Unit (RAU)
BOE-Assessed	Petitions Section
Consumer Use Tax	Consumer Use Tax Section (CUTS)

2. Special Taxes and Fees Division (STFD)

   Requests will be processed by staff in the Compliance Branch, Return Processing and Support Section. The approval levels required are the same as those required for relief of penalty.

3. Motor Carrier Office (MCO)

   Requests will be processed by compliance staff. The approval levels required are the same as those required for relief of penalty.

4. County Assessed Properties Division (CAPD)

   Relief requests involving Timber Tax accounts will be signed off by the Timber Tax Principal Property Appraiser (PPA); the Senior Forest Property Appraiser is the designee in the PPA's absence.

B. Reconsideration Requests

As with denied requests for relief of statutory penalties, denied requests for relief of the CRF can be reconsidered if the taxpayer provides new or additional information not provided with their original request. Such information should be received within 15 days following the date the denial letter was sent to the taxpayer. The 15-day period is intended to be a reasonable guideline and is not absolute as staff may still consider information received after 15 days.

For SUTD accounts, reconsideration requests will be reviewed by staff in the RAU, the Petitions Section, or CUTS, as identified in section V.A. For STFD, MCO and CAPD accounts, the staff who worked the original request for relief will work the reconsideration request. The guidelines provided in section VI will be used in evaluating reconsideration requests. Reconsideration requests that are granted will be processed in the same manner as described previously in this section.

Reconsideration requests that are recommended for denial must be forwarded to either the SUTD or PSTD Deputy Director or designee for review. If the Deputy Director or designee agrees with staff's recommendation to deny the request, the Deputy Director or designee will send a letter to the taxpayer stating that he or she agrees with staff's recommendation.

VI. GUIDELINES FOR EVALUATING RELIEF REQUESTS

The same law sections that require BOE to impose a CRF on past due liabilities also provide BOE with the authority to relieve the CRF. Specifically, the statutes allow relief of the CRF to be granted if a person's failure to pay an amount "…is due to reasonable cause and circumstances beyond a person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect…"

This section provides information for evaluating and processing relief requests. In evaluating relief requests three areas need to be considered:

- The completeness of the request;
- The reason(s) for which a taxpayer is requesting relief; and
- Whether the fee-originating liability has been paid in full.

A. Completeness of the Request

When BOE's online relief request process is implemented, taxpayers will be able to submit relief requests electronically via our website. In the meantime, relief requests must be submitted in writing and signed under penalty of perjury. Additionally, a taxpayer must provide the reason(s) they are seeking relief of the CRF. Form BOE-735, *Request for*

Relief from Penalty, Collection Cost Recovery Fee, and/or Interest, was revised so that it could accommodate all types of relief requests, including requests for relief from the CRF. If a request is not signed under penalty of perjury or if a specific reason is not provided on the request, staff should attempt to obtain this information by contacting the taxpayer and requesting they submit a corrected request. In instances where such attempts are unsuccessful, staff will take no further action on the request.

B. [redacted]

[redacted]

C. Fee-Originating Liability Must be Paid in Full

Assuming a taxpayer's request qualifies for relief based on the guidelines provided in section B., relief will only be granted when the tax, interest, and penalty of the fee-originating liability has been paid in full.

VIII. OBSOLESCENCE

This operations memorandum will become obsolete when the information contained herein is incorporated into the appropriate manuals.

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